IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20/06/2003

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA

WRIT PETITION.NO.3692 OF 1996
and
WMP.NOs.5920,13579 to 13581 OF 1996

The Regional Manager,
Region No.III,
State Bank of India,
No.43, Moore Street,
Madras 600 001. .. Petitioner

-Vs-

1. The Presiding Officer,
Industrial Tribunal,
Madras.

2. P. Venkataraman .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorari as stated therein.

For Petitioner : Mr.V. Karthick for
M/s.T.S. Gopalan & Co.

For Respondent-1 : Mr.P.S. Jayakumar

Respondent-2 : Mr.K. Chandru
Senior Counsel for
Mr.R. Thirugnanam

:J U D G M E N T

This is a shocking instance of how the discretionary power conferred under Section 11-A of the Industrial Disputes Act is abused by the Tribunal to interfere with the order of punishment on the pretext of alleged disproportionate nature of the punishment.

2. The facts are no longer in dispute. The respondent No.2 was working as a clerk in State Bank of India. The incident took place more than two decades back on 21.1.1983. The second respondent reported late for duty and therefore, the acting chance was given to the next senior most

employee. The second respondent, who opposed such routine action, went to the Branch Manager's room and shouted at him and used derisive language. The Branch Manager tried to pacify the second respondent. When the second respondent demanded a written explanation from the acting Branch Manager, the latter cautioned him and the second respondent retorted by saying that " Oh! You had the courage to issue me a memo. I will break your teeth". The acting Branch Manager proceeded to the Branch Manager's room and the second respondent followed him with a leave letter stating that as a protest he was going on leave. The acting Branch Manager asked him to place the leave letter on the table. The acting Branch Manager got a memo typed to be issued to the second respondent and when he returned to his room, the leave letter was missing. When the acting Branch Manager sought to serve the memo on the second respondent , the latter shouted at him as " you have guts to issue the memo. I will beat you in the office itself and I will break your teeth". So saying, the second respondent tried to destroy the memo by lighting a match stick. Then the second respondent forcibly snatched the memo from the acting Branch Manager and tore it. The second respondent also took his chappal in his hand and raised the same with a view to beat the acting Branch Manager, but the staff members intervened and led the second respondent away from the scene.

3. Subsequently, the second respondent was served with a charge memo calling upon to him show cause and after holding a domestic enquiry, an order of dismissal was passed on 26.4.1983.

4. The second respondent filed W.P.No.8583 of 1983 alleging that he had not been given sufficient opportunity. On 2.12.1986, the writ petition was allowed with a direction that the second respondent should be given reasonable opportunity to file written statement of defence and thereafter the witnesses examined may be tendered for crossexamination. The enquiry was thus resumed and 13 out of 15 witnesses were made available for cross-examination. Thereafter the enquiry officer gave his findings against the second respondent and after service of second show cause notice and after giving personal hearing, a fresh order of dismissal was passed on 27.6.1988.

5. The second respondent raised Industrial Dispute. On consideration of the materials available on record, the Presiding Officer of the Industrial Tribunal found that there was wordy altercation between the second respondent and the Branch Manager, the second respondent shouted at the Branch Manager twice which amounted to a misbehaviour towards a superior, the memo issued to the second respondent was torn and an attempt was made to burn it with a match stick, the second respondent assaulted the Branch Manager and non-examination of two witnesses did not affect the case, the assault on the Branch Manager had been proved through other witnesses, the second respondent had been given reasonable opportunity to defend his case, the enquiry officer was not biased, the charges levelled against the second respondent were proved by legal evidence and the domestic enquiry was fair and proper, the second respondent had removed his chappal and attempted to beat the Branch Manager and that there is no question of victimisation.

6. In spite of all these findings rendered by the Tribunal,

it observed that the second respondent had rendered good service by mobilising deposits to the tune of Rs.3 lakhs and this should have been taken into consideration while awarding the punishment and the punishment of dismissal was shockingly disproportionate to the gravity of the charges. The Tribunal accordingly held that stoppage of two increments with cumulative effect would meet the ends of justice and the punishment was accordingly modified. This award of the Tribunal is being challenged by the Management.

7. After the award was passed, reserving the right to challenge the award, the petitioner without prejudice to his contentions, permitted the second respondent to rejoin and after filing the writ petition had prayed for stay of payment of backwages. At that stage, after hearing the petitioner as well as the second respondent, an order was passed in WMP.NOs.5920, 13579 and 1 3582 of 1996 holding that the second respondent was entitled to basic pay from the date of reinstatement with other attendant benefits. Since some amount had already been recovered, there was a direction not to deduct any further amount and to pay back the amount already recovered. So far as the backwages was concerned, it was observed . . . considering the charges levelled and which were proved, it will not be justifiable to direct the bank to pay the entire amount of the backwages to the second respondent in the writ petition.

8. A counter affidavit has been filed by the second respondent wherein the second respondent has tried to justify the order passed by the Tribunal. It has been further stated that :
 I state that I have suffered the punishment of the stoppage of the two increments with cumulative effect. Further I was also promoted to the post of Senior Assistant on 31.3.2001 with retrospective effect from 1.4.1999 and I was permitted to retire from the post of Senior Assistant under State Bank of India, Voluntary Retirement Scheme on 31-03-2001. I state that in pursuance of the award, my service has been treated with continuity of service and I was paid full salary and other allowances accordingly. The petitioner has permitted me to retire from the service without imposing any conditions. Hence the writ petition itself has become infructuous.

9. From the aforesaid assertion, it is apparent that in the meantime the second respondent after being reinstated has been allowed to retire from the post of Senior Assistant under the State Bank of India, Voluntary Retirement Scheme on 31.3.2001.

10. Learned counsel for the second respondent has submitted that in view of the subsequent events, the writ petition has become infructuous and has to be dismissed accordingly.

11. Learned counsel for the petitioner has submitted that it cannot be said that the writ petition has become infructuous as the question of payment of backwages is inter-linked with the fate of the writ petition. In case the writ petition is dismissed, in view of the earlier order of the High Court, the bank will be forced to pay the entire backwages.

12. Submission of the learned counsel for the second

respondent that the writ petition has become infructuous is not well founded. If ultimately the order of tribunal would be sustained, it is obvious that all consequential benefits such as payment of backwages are to be given. Therefore, the award of the Tribunal has to be considered on merit notwithstanding the subsequent events.

13. Learned counsel appearing for the petitioner has submitted that in view of gross misconduct which has been found by the enquiry officer and confirmed by the Tribunal, there is no scope in treating the second respondent with leniency as has been done by the Tribunal.

14. Learned counsel for the petitioner has relied upon a decision of the Supreme Court reported in 2000(4) L.L.N. 562 (MAHENDRA NISSAN ALLWYNS, LTD. v. M.P. SIDDAPPA AND ANOTHER). It is profitable to extract the relevant portion from the aforesaid decision:

 . . . 3. The High Court found no fault with the finding that the charges had been proved. It found that the charges were not serious in nature and the punishment that was imposed was disproportionate.

4. We do not agree with the High Court. The charges are of a serious nature. The first respondent was found to have led out workmen from the factory premises regardless of the challenge by the security guard. Along with these workmen the first respondent entered the administrative building of the appellant and the room of the Deputy General Manager. The Deputy General Manager and Manager (Personnel) were abused in filthy language and threatened, examples of which have been given. Misbehavior was also proved against the first respondent in his conduct with five executives of the appellants. If these are not serious charges against a workman worthy of his dismissal from service, we do not know what can be. The High Court was quite wrong in the conclusion that it reached and in the order that it passed. The punishment imposed against the respondent must remain unaltered.

15. On the other hand the learned counsel appearing for the second respondent has relied upon several other decisions of the Supreme Court and other High Courts. Most of those decisions as well as the decision relied upon by the petitioner had been considered by the learned single Judge of this Court reported in 2002(3) L.L.N. 314 (DAMODARAN v. PRESIDING OFFICER, SECOND ADDITIONAL LABOUR COURT, MADRAS AND ANOTHER) wherein ultimately it was decided that the order of dismissal imposed upon the delinquent, a Secretary of the Labour Union, for using abusive words was grossly disproportionate and should be modified.

16. A perusal of various decisions referred to in the aforesaid decision including the decisions relied upon by both the parties would show that question as to whether punishment is grossly disproportionate or not would obviously depend upon the facts and circumstances of each case and no inexorable principle can be laid down. No doubt there are several

cases where the Supreme Court and this Court have held that punishment of dismissal for mere use of abusive words without any thing more would be grossly disproportionate. However, in my humble opinion the ratio of the said decision would not be applicable to the facts of the facts of the present case. It is already noticed that apart from using the abusive words, the delinquent in the present case had torn the charge memo prepared by the superior officer and had threatened to assault him and also shown his chappal with threatening gesture. Obviously such an action cannot be equated with mere use of abusive words as was the case in the matter decided by this Court and in the decision of the Supreme Court relied upon by this Court. To say the least, the action in the p resent case showed disrespect for the lawful authority accompanied with threatening gestures including showing of chappal. To borrow the words of the Supreme Court in 20 00(4) LLN 562 (cited supra) If these are not serious charges against a workman worthy of his dismissal from service, we do not know what can be. From the record it is apparent that the acting Branch Manager was saved from the assault with the chappal by an inferior employee only with the timely intervention of the co-employees. To encourage such action by exercising jurisdiction under Section 11-A of the Industrial Disputes Act, obviously is a case of misplaced sympathy. It is true that the delinquent has mobilised some deposits to the bank. The delinquent was reinstated by the Management, obviously with a view to avoid payment of amount under Section 17B. The delinquent has also been allowed to retire. But, these aspects are not sufficient to come to a conclusion that the award passed by the Tribunal directing reinstatement and imposing punishment of stoppage of two increments was justified. Punishment of dismissal from service imposed by the disciplinary authority was apt and the punishment suggested by the Tribunal would be in fact grossly inadequate keeping in view the nature of misdemeanor. The Tribunal has obviously far exceeded its jurisdiction in reducing the punishment without any apparent justification.

17. The next question is as to what would be the order to be passed in view of the subsequent events. It has been already noted that the delinquent was reinstated in service and was subsequently given the benefit of voluntary retirement scheme. There is no question of recalling all these subsequent actions. However, it would be most unjust to allow the second respondent to have the benefit of any of the backwages. Therefore, while setting aside the award passed by the Tribunal, the writ petition is disposed of with an observation that the second respondent would not be entitled to any other amount towards backwages and the order of retirement under voluntary retirement scheme is allowed to stand.

18. Subject to the aforesaid observation, the writ petition is disposed of. No costs. Consequently, the connected miscellaneous petitions are closed.

Index : Yes
Internet : Yes
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To

The Presiding Officer,
Industrial Tribunal,
Madras.